

St. Louis Theatrical Brotherhood Local No. 6 of the International Alliance of Theatrical Stage Employees, Moving Picture Machine Technicians & Artists of the United States and Canada, AFL-CIO and Kiel Center Partners, L.P. d/b/a Savvis Center and Local 1, International Brotherhood of Electrical Workers, AFL-CIO. Case 14-CD-1011

June 6, 2001

**DECISION AND DETERMINATION OF DISPUTE
BY CHAIRMAN HURTGEN AND MEMBERS
LIEBMAN
AND TRUESDALE**

The underlying charge in this Section 10(k) proceeding was filed on January 24, 2001, and amended on January 30, 2001, by Kiel Center Partners, L.P. d/b/a Savvis Center (Savvis or the Employer). It alleges that the Respondent, IATSE Local 6 (Local 6 or Stagehands), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by IBEW Local 1 (Local 1 or Electricians). The 10(k) hearing was held on February 13, 2001, before Hearing Officer Donald F. Jueneman.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, a Missouri partnership with its sole office and place of business in St. Louis, Missouri, is engaged in the nonretail rental of space for sporting and entertainment events. It annually purchases and receives at its St. Louis, Missouri facility, directly from points located outside the State of Missouri, goods valued in excess of \$50,000. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find, based on the stipulations of the parties, that Local 6 and Local 1 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

Savvis Center is a large, multiuse arena in St. Louis, Missouri. Savvis hosts hockey games, basketball games, trade shows, concerts, and other gatherings that require an arena of its size. During the 1999–2000 National Hockey League season, Savvis leased some lights as part

of its pregame theatrical production for St. Louis Blues hockey games. These lights (generally referred to by the parties as “moving lights”) can move up and down, arc in different directions, narrow or widen their focus, change hundreds of colors, and project ads, logos, flag symbols, or other pictures.

During the 1999–2000 season, employees represented by the Stagehands operated these lights. The collective-bargaining agreement between Savvis and the Stagehands covers “work in connection with handling all equipment that is brought into the arena in connection with setting, placement, handling, operation, dismantling, [and] striking of all equipment used for any type of theatrical production,” as well as any “temporary lighting.” The contract also covers the operation of the houselights and spotlights. During the pregame production, employees represented by the Stagehands would turn off or dim the houselights and then operate the spotlights and the moving lights. While Savvis was leasing moving lights, the Electricians did not dispute their operation by employees represented by the Stagehands.

Before the 2000–2001 season, Savvis decided to buy moving lights. Savvis bought 10 of the lights, and employees represented by the Electricians installed them. The collective-bargaining agreement between Savvis and the Electricians covers both the maintenance and operation of all “lighting fixtures.”

According to Jack Beckman, business representative of the Stagehands, some Local 6 employees learned from Local 1 employees that the Electricians would be claiming the operation of the moving lights after their installation. On August 29, 2000,¹ the Stagehands filed a grievance to make sure that they continued to operate the moving lights during the upcoming hockey season. In response, on September 8, Lawrence (Butch) Hepburn Jr., business representative of Local 1, sent a letter to Savvis advising that the Electricians now considered these lights a fixture, and thus subject to the Electricians' work jurisdiction.

Without objection from the Stagehands, Savvis invited the Electricians to Local 6's grievance meeting on September 11. At the meeting, the two unions did not agree on an assignment of the work. Consequently, on September 14, Savvis assigned the operation of the moving lights to the Stagehands, and the installation and maintenance to the Electricians. Savvis based its decision on the theatrical nature of the lights, the Stagehands' operation of other theatrical-type lighting effects (houselights and spotlights), and past practice during the 1999–2000 season.

¹ All dates are in 2000 unless indicated otherwise.

The Electricians filed a grievance under their contract on September 14. Savvis denied it on October 2, and employees represented by the Stagehands continued to operate the moving lights. The Electricians proceeded with their grievance against Savvis, and at the time of the instant hearing, had selected an arbitrator.

On January 5, 2001, Local 6 mailed, faxed, and hand-delivered a letter to David Coverstone, vice president of human resources for Savvis, in which the Stagehands stated that unless they continued to receive the assignment of the operation of the moving lights and appropriate assurances thereto, they would “strike in protest,” regardless of the no-strike provision in their contract. The Employer continued its assignment of the work to employees represented by the Stagehands and filed the instant charge.

B. The Work in Dispute

The work in dispute concerns the operation of the moving theatrical lights during events at Savvis Center, 1401 Clark Avenue, St. Louis, Missouri.

C. Contentions of the Parties

The Electricians have moved to quash the notice of hearing on two separate grounds. First, they contend that there is no 10(k) dispute because there is no reasonable cause to believe that Section 8(b)(4)(D) has been violated. They assert that the Stagehands’ alleged threat to strike is a sham, made only in order to invoke the jurisdiction of the Act. Second, they urge the Board to adopt a new rule governing the circumstances of this case and to quash the notice based on this new rule. Alternatively, the Electricians argue that if the Board does find that it has jurisdiction to decide the merits of the dispute, the relevant factors favor an award to Local 1.

The Employer and the Stagehands contend that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. Both parties contend that the Stagehands threatened to strike in their January 5, 2001 letter, confirmed the threat to Coverstone orally, and repeated the threat at the hearing. They contend that the work in dispute is thus properly before the Board for determination pursuant to Section 10(k) of the Act, that there is no single voluntary means for adjustment binding on all three parties here, and that the motion to quash should be denied. Additionally, the Employer and the Stagehands contend that the relevant factors favor an award of the disputed work to the employees represented by the Stagehands.

D. Applicability of the Statute

Before the Board may proceed with a determination pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section

8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

On January 5, 2001, the Stagehands sent a letter to the Employer threatening a strike if they did not continue to receive the assignment of the work in dispute and receive assurances to that effect. Although the Electricians urge the Board to find that the circumstances involved suggest no such strike ever would have occurred, they offer only conjecture in support of such a finding. Local 6’s letter, on its face, constitutes a threat to take proscribed action. There is no affirmative evidence that the threat was in fact a “sham.” *Brewers & Maltsters Local 6 (Anheuser-Busch)*, 270 NLRB 219, 220 (1984).

The existence of a no-strike clause in the Stagehands’ collective-bargaining agreement does not alter this analysis. *Lancaster Typographical Union No. 70 (C.J.S. Lancaster)*, 325 NLRB 449, 451 (1998). We reject the Electricians’ argument in this regard. We likewise decline their invitation to quash the notice of hearing based on a new rule, which would entail overruling existing precedent. We therefore find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers Local 1212 (Columbia Broadcasting)*, 364 US 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (Jones Construction)*, 135 NLRB 1402 (1962). The following factors are relevant in making the determination of this dispute.

1. Certification and collective-bargaining agreements

The parties stipulated that there are no Board certifications concerning the employees involved in this dispute.

Both Unions have a collective-bargaining agreement with the Employer. The Stagehands assert that the jurisdictional language in their contract covering the operation of equipment brought into the arena for a theatrical production, temporary lighting, and houselights, all favor an award of the disputed work to the employees they represent. The moving lights are used in the pregame theatrical production. However, the equipment is not being brought into the arena anymore. It has been permanently installed. Similarly, the lights are no longer

“temporary,” although they are virtually the same lights that the Stagehands operated the previous season when they were “temporary.” The moving lights do not fall into the houselights category either, although they are operated in concert with the houselights, and require that the houselights be turned off or dimmed prior to their operation.

The Electricians assert that their jurisdiction over “lighting fixtures” favors an award of the disputed work to the employees they represent. It is undisputed that the Electricians performed the installation work on the moving lights, and that these lights are now permanently affixed to Savvis Center. Even so, the moving lights are quite different from the other nontheatrical lighting fixtures in the arena, whose operation and maintenance by the Electricians the Stagehands do not dispute.

Based on the foregoing, we find the evidence insufficient to support any affirmative finding regarding this factor. Therefore, this factor does not favor an award of the disputed work to either of the competing employee groups.

2. Employer preference and current assignment

The Employer assigned the disputed work to employees represented by the Stagehands and prefers that the work in dispute continue to be performed by employees represented by the Stagehands. Accordingly, this factor favors awarding the work in dispute to the employees represented by the Stagehands.

3. Employer’s past practice

It is undisputed that when Savvis leased moving lights for the 1999–2000 season, employees represented by the Stagehands operated them. The Electricians assert that they did not challenge this assignment because the lights were not fixtures at that point. The Electricians also argue that the strobe lights (which turn on when a goal is scored), advertising panels, sound system, scoreboard, and other electronic systems, all of which they operate, have theatrical-type effects similar to the moving lights. By contrast, the moving lights have a purely theatrical effect and are used only during a discrete time frame before a game in conjunction with other objects operated by employees represented by the Stagehands. Accordingly, we find that this factor favors an award of the work in dispute to the employees represented by the Stagehands.

4. Area and industry practice

Moving lights are theatrical lights. Coverstone and Fred Corsi, vice president of operations for Savvis, both testified that the Stagehands operate theatrical lights in the St. Louis area. Beckman testified that only employees represented by the Stagehands operate these lights in

the St. Louis area. According to Beckman, only 3 (including Savvis) of the 18 employers with which Local 6 has a contract own moving lights. Due to their highly technical nature and the rapid changes in technology, most contractors prefer to rent them. In most cases, moving lights are brought into a venue and operated by the Stagehands. These facts make Savvis’ permanent installation somewhat unusual. Still, it is undisputed that Electricians do not operate moving lights anywhere in the St. Louis area. We find that this factor favors an award of the work in dispute to the employees represented by the Stagehands.

5. Relative skills

When Savvis leased the moving lights, the Stagehands received training on them. They received new training when Savvis purchased a slightly upgraded version of the moving lights. Local 6 has now established a training program to instruct local contractors in the operation of moving lights. The Electricians have not been trained on the moving lights, and most likely would require some training in order to operate them. Corsi speculated that the Electricians probably would have been scheduled for training during the time when Local 1 was installing the lights and claimed their installation. We find that this factor favors an award of the disputed work to employees represented by the Stagehands.

6. Economy and efficiency of the operations

Employees represented by the Stagehands operate the moving lights from the overhead catwalk, where they use a computerized control panel. Employees represented by the Stagehands are already on the catwalk to operate the spotlights for the pregame production. Employees represented by the Electricians might go up on the catwalk to perform maintenance or installation work, but, unlike the Stagehands, it is not their normal work area. The Electricians admitted that if awarded the work, they would have to bring in an additional employee to operate the moving lights. During the pregame production, the moving lights are used in close conjunction with the houselights and spotlights, both of which the Stagehands operate. Accordingly, we find that this factor favors awarding the work in dispute to employees represented by the Stagehands.

Conclusion

After considering all the relevant factors, we conclude that Savvis’ employees represented by the Stagehands are entitled to perform the work in dispute. We reach this conclusion relying on the factors of employer preference and assignment, employer past practice, area practice, relative skills and training, and economy and efficiency of the operations. In making this determination,

we are awarding the disputed work to employees represented by St. Louis Theatrical Brotherhood Local No. 6 of the International Alliance Of Theatrical Stage Employees, Moving Picture Machine Technicians & Artists of the United States and Canada, AFL–CIO, not to that Union or to its members. This determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of Kiel Center Partners, L.P. d/b/a Savvis Center represented by St. Louis Theatrical Brotherhood Local No. 6 of the International Alliance of Theatrical Stage Employees, Moving Picture Machine Technicians & Artists of the United States and Canada, AFL–CIO are entitled to perform the operation of the moving theatrical lights during events at Savvis Center, 1401 Clark Avenue, St. Louis, Missouri.